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September 15, 2008

DECISION AND ORDER
OFFICE OF HEARINGS AND APPEALS

Hearing Officer Decision

Name of Case: Personnel Security Hearing
Date of Filing: January 24, 2008
Case Number: TSO-0591

This Decision concerns the eligibility of XXXXXXXXXXXX (hereinafter referred to as “the individual”) to hold an access authorization under the Department of Energy’s (DOE) regulations set forth at 10 C.F.R. Part 710, Subpart A, entitled, “General Criteria and Procedures for Determining Eligibility for Access to Classified Matter or Special Nuclear Material.”¹ A DOE Local Security Office (LSO) suspended the individual’s access authorization pursuant to the provisions of Part 710. In this Decision, I will consider whether, on the basis of the testimony and other evidence in the record of this proceeding, the individual’s access authorization should be restored. As discussed below, after carefully considering the record before me in light of the relevant regulations, I have determined that the DOE should not restore the individual access authorization at this time.

I. Background

On February 5, 2007, the individual, a DOE employee, reported to the LSO that he had been arrested and charged with Driving While Intoxicated (DWI) on February 2, 2007. Exhibit 11; Exhibit 4 at 2. A subsequent background investigation revealed an August 2000 DWI arrest that the individual had not disclosed to the DOE during an April 11, 2001, Personnel Security Interview (PSI) conducted to address alcohol-related issues. *Id.* Based on these two facts, and because the individual’s history included two earlier DWI arrests, the LSO conducted a PSI with the individual on August 10, 2007. *Id.*; See Exhibit 19. Because the security concern remained unresolved after the PSI, the LSO requested that the individual be interviewed by a DOE consultant psychiatrist (DOE psychiatrist). See Exhibit 3. The psychiatrist interviewed the individual on September 17, 2007. See Exhibit 8. The LSO ultimately determined that the derogatory information concerning the individual created a substantial doubt about his eligibility for an access authorization, and that the doubt could not be resolved in a manner favorable to

¹ Access authorization is defined as “an administrative determination that an individual is eligible for access to classified matter or is eligible for access to, or control over, special nuclear material.” 10 C.F.R. § 710.5(a). Such authorization will be referred to variously in this Decision as access authorization or security clearance.

him. Accordingly, the LSO proceeded to obtain authority to initiate an administrative review proceeding.

The administrative review proceeding began with the issuance of a Notification Letter to the individual. *See* 10 C.F.R. § 710.21. That letter informed the individual that information in the possession of the DOE created a substantial doubt concerning his eligibility for access authorization. Specifically, the DOE characterized this information as indicating that the individual has deliberately misrepresented, falsified, or omitted significant information from a Questionnaire for National Security Positions (QNSP), a personnel qualifications statement, or written or oral statements made in response to official inquiry on a matter that is relevant to a determination regarding eligibility for DOE access authorization, Exhibit 1 (citing 10 C.F.R. § 710.8(f)), and that the individual has been, or is a user of alcohol habitually to excess, or has been diagnosed by a board-certified psychiatrist as alcohol dependent or as suffering from alcohol abuse. *Id.* (citing 10 C.F.R. § 710.8(j)).

The Notification Letter informed the individual that he was entitled to a hearing before a Hearing Officer in order to resolve the substantial doubt regarding his eligibility for access authorization. The individual requested a hearing, and the LSO forwarded the individual's request to the Office of Hearings and Appeals (OHA). The Director of OHA appointed me as the Hearing Officer in this matter on February 8, 2008.

At the hearing I convened pursuant to 10 C.F.R. § 710.25(e) and (g), I took testimony from the individual, his partner, two substance abuse therapists who have treated the individual, the individual's probation officer, his supervisor, his Alcoholic Anonymous (AA) sponsor, and the DOE psychiatrist. The DOE Counsel submitted 21 exhibits prior to the hearing, and the individual presented five exhibits.

II. Regulatory Standard

A hearing under Part 710 is held "for the purpose of affording the individual an opportunity of supporting his eligibility for access authorization," i.e., "to have the substantial doubt regarding eligibility for access authorization resolved." 10 C.F.R. § 710.21(b)(3), (6). It is my role as the Hearing Officer to issue a Decision that reflects my comprehensive, common-sense judgment, made after consideration of all the relevant evidence, favorable and unfavorable, as to whether the granting or continuation of a person's access authorization will not endanger the common defense and security and is clearly consistent with the national interest. 10 C.F.R. § 710.7(a). I am instructed by the regulations to resolve any doubt as to a person's access authorization eligibility in favor of the national security. *Id.*

I have thoroughly considered the record of this proceeding, including the submissions tendered in this case and the testimony of the witnesses presented at the hearing. In resolving the question of the individual's eligibility for access authorization, I have been guided by the applicable

factors prescribed in 10 C.F.R. § 710.7(c).² After due deliberation, I have determined that the individual's access authorization should not be restored. The specific findings that I make in support of this decision are discussed below.

III. The Notification Letter and the Security Concerns at Issue

As the basis for security concerns under Criterion F, the Notification Letter cites the individual's failure to disclose, during an April 11, 2001, PSI, an August 2000 DWI arrest and subsequent counseling and participation in AA. Further noted are discrepancies between the individual's 2001 and 2007 PSIs regarding when he resumed drinking after his 1998 DWI and whether he had ever experienced any blackouts after consuming alcohol. Exhibit 1 (citing 10 C.F.R. § 710.8(f)).

Cited as bases for a security concern under Criterion J were: (1) the DOE Psychiatrist's diagnosis that the individual suffers from Alcohol Abuse, the prognosis for which is worsened by the presence of Dysthymic Disorder; (2) four arrests of the individual for DWI, one each in 1991, 1998, 2000, and 2007; (3) a 1981 charge of Minor in Possession of Alcohol; (4) the individual's 1979 suspension from his high school basketball team for consuming alcohol in his dormitory; (5) the individual's blackout after consuming alcohol in 1994; (6) admitted difficulties in personal relationships stemming from his alcohol use.

I find that the information set forth above constitutes derogatory information that raises legitimate questions regarding the individual's eligibility for access authorization under Criterion F and J. Regarding Criterion F, the individual's failure to provide full, frank and truthful responses during his 2001 PSI, raises questions about his reliability, trustworthiness and ability to protect classified information. *See* Guideline E (15) of the *Revised Adjudicative Guidelines for Determining Eligibility for Access to Classified Information* issued on December 29, 2005 by the Assistant to the President for National Security Affairs, The White House (Adjudicative Guidelines). As for Criterion J, the excessive consumption of alcohol is a security concern because that behavior can lead to the exercise of questionable judgment and the failure to control impulses, which in turn can raise questions about a person's reliability and trustworthiness. *See id.* at Guideline G.

IV. Findings of Fact

The relevant facts in this case are not in dispute. The individual has a long history of alcohol-related incidents, beginning with his suspension from his high school basketball team in 1979 for

² Those factors include the following: the nature, extent, and seriousness of the conduct, the circumstances surrounding his conduct, to include knowledgeable participation, the frequency and recency of his conduct, the age and maturity at the time of the conduct, the voluntariness of his participation, the absence or presence of rehabilitation or reformation and other pertinent behavioral changes, the motivation for his conduct, the potential for pressure, coercion, exploitation, or duress, the likelihood of continuation or recurrence, and other relevant and material factors.

consuming alcohol in his dormitory. The individual has admitted to having been charged with Minor in Possession of Alcohol in 1981, and with DWI on four separate occasions, in 1991, 1998, 2000, and 2007. Exhibit 20 at 27. However, as cited in the Notification Letter, the individual failed to disclose his August 2000 DWI arrest, as well as subsequent counseling and participation in AA, in an April 11, 2001, PSI conducted to address his alcohol use. In the same PSI, the individual falsely stated that he had abstained from consuming alcohol after his 1998 arrest under December 2000.

Moreover, at least one of these charges was not disclosed by the individual on each of five QNSPs that the individual completed in 1992, 1992, 1995, 1999, and 2005, in response to the following question: "Have you ever been charged with or convicted of any offense(s) related to alcohol or drugs?" Specifically, the individual failed to disclose:

- the 1981 charge of Minor in Possession of Alcohol on his 1992, 1994, 1995, 1999, and 2005 QNSP
- the 1991 DWI charge on his 1994, 1995, and 2005 QNSP
- the 1998 DWI charge on his 1999 and 2005 QNSP

Exhibits 14, 15, 16, 17, 18. Though these repeated failures to disclose information on his QNSPs were not cited in the Notification Letter, they are obviously facts relevant to my consideration of the concerns raised under Criterion F discussed above.

After his most recent DWI arrest in 2007, the individual received individual treatment from a substance abuse and mental health therapist and, in September 2007, was referred by a court to a substance abuse treatment program in which he was still participating at the time of the hearing in this matter.

V. Hearing Testimony

A. The Individual's Therapist from March 2007 to March 2008

After his February 2007 DWI arrest, the individual sought treatment from a substance abuse and mental health therapist whom he saw on an individual basis from March 2007 to March 2008. Hearing Transcript [hereinafter Tr.] at 73. This therapist testified that he met with the individual eight times during this period. *Id.* at 76. The therapist initially diagnosed the individual as suffering from alcohol abuse and "moderate mild depression." *Id.* at 73-74. On June 8, 2007, after having met with the individual four times, the therapist "removed" the diagnosis of alcohol abuse, "largely based" upon the individual's reported abstinence from alcohol since the DWI arrest. *Id.* at 74-75, 76. In subsequent meetings, the therapist's treatment focused on the individual's issues with depression. *Id.* at 77. In March 2008, based upon the individual's report that "all the areas in his life seem[ed] to be working very well for him," the therapist diagnosed the individual's depression as being in remission, and saw no further need for treatment. *Id.* at 82-83.

B. The Individual's Probation Officer

On September 6, 2007, on the recommendation of the individual's probation officer, the judge in the individual's DWI case referred the individual to what the probation officer described in her testimony as "an intensive supervision program . . . for people who have between two and five convictions for DWI." *Id.* at 86, 87-88. As part of the program, the individual has completed 48 hours of community service and attended a victim impact panel. *Id.* at 88. The program also required the individual to attend at least two group counseling sessions and one AA meeting per week. *Id.* In addition, the individual has been subject to random testing for alcohol consumption twice per week, and is also tested each time he attends a group counseling session. *Id.* at 90.

At the beginning of the program, the individual met with the probation officer twice a week, and now sees her every three weeks. *Id.* at 87, 88. The probation officer testified that the individual has never missed a required meeting, *id.* at 93, and has "just worked a really good program." *Id.* at 94. The probation officer has the option to designate any participant as an "All-Star in the program, and I don't do it very often, but [the individual] was named an All-Star in the program for his level of participation, his willingness to help others out while in the program. He's become a good mentor to other participants." *Id.* The probation officer testified that the individual was in the last phase of his program, and expected him to complete the program in July 2008. *Id.* at 87, 95.

C. The Individual's Group Therapist

The group counseling sessions which the individual has attended since September 2007 are conducted by a private counseling firm and facilitated by a substance abuse therapist who testified at the hearing. *Id.* at 44-45, 56. In his hearing testimony, this therapist described the two groups that the individual was required to attend each week, the Chemical Dependency group and the Integrity Recovery group. *Id.* at 46-47, 51-52. Though not required to, the individual also regularly attends a Talking Circle group, which addresses issues from a spiritual perspective. *Id.* at 47-49. The therapist confirmed that the individual has, as required, attended AA meetings at least once per week, and has a sponsor. *Id.* at 50. The therapist testified that the program in which the individual is participating is normally comprised of four three-month phases, but that some complete the program in as little as nine months, and because the individual has gone "above and beyond expectations," he is now in the final phase of the program. *Id.* at 53-54. After completion of the program, the individual can participate in an Alumni Group, which provides an opportunity for those who have completed the program "to continue the connection with this program and also to bring back their Integrity work and continue to do the work in that particular group." *Id.* at 52. The therapist described the individual as a "model client," who has "been really diligent in application of his recovery," and who sincerely wants change. *Id.* at 55-56, 62-63.

The therapist contrasted the individual's current treatment with that he underwent after his August 2000 DWI, noted above. The therapist cited the "wider variety of intervention tools,"

including the “connection to spirituality” emphasized in the Talking Circle group, as “offering him a little bit more than what he may have received in the past.” *Id.* at 65-66. The therapist testified to his belief that the individual “hit his bottom” and that “sometimes in his past he may not have been prepared to stop, the behavior was a big part of his life for various reasons, but at this point in his life, I really believe he's willing to make this change.” *Id.* at 68. As to the individual’s risk of future relapse, the therapist opined that, so long as the individual “applies the necessary tools when he encounters any risk for relapse, his risk would be low.” *Id.* at 67.

D. The Individual’s AA Sponsor

The individual’s AA sponsor testified that the individual began attending AA meetings in September 2007, and that he sees the individual, on average, at least three times per week. *Id.* at 114. The sponsor described the individual as quiet at first, but becoming more involved since. *Id.* at 115. According to the sponsor, the individual is “working the steps, working the program,” participates “meaningfully” in the meetings, and “comes to meetings because he wants to come, not because that paper says he has to come.” *Id.* at 115, 116.

The sponsor testified that it is clear to him that the individual accepts that he has an alcohol problem. *Id.* at 119. Although the individual has never expressed to the sponsor that he had an urge to drink, the sponsor noted that the individual has the phone numbers of the sponsor and the other members of the AA group, as well as the city’s central AA office, and could call any of them if he chose to. *Id.* at 120, 121. The sponsor testified that the individual did call him on one occasion when he was apprehensive about attending a party, and the sponsor told him that, if he had an urge, to either leave the party or call him. The sponsor subsequently learned that the individual attended the party without a problem. *Id.* at 121. Finally, the sponsor stated that he believes the individual will refrain from drinking in the future, and will continue to attend AA meetings even after they are no longer required as part of his program. *Id.* at 123, 124-25.

E. The Individual’s Partner

The individual’s partner, with whom the individual has lived for 18 years and who is the mother of his three children, described the individual as a “very decent” and “very diligent” person who made a “very stupid choice,” referring to the individual’s most recent DWI arrest. *Id.* at 14-15. She stated that, for the three or four years prior to this arrest, the individual would drink about four to six beers over the course of a week, and does not remember the last time he was intoxicated. *Id.* at 17-18. She testified that she has not seen the individual drink since the DWI arrest, and believes that she would know it if he had, given the fact that they live and sleep together and that she would smell it on his breath if he were to drink. *Id.* at 18-19.

She testified that she had spoken to him regarding his drinking, not to ask him to stop, but rather to complain that he would not call her to let her know he was coming home later than expected. *Id.* at 30-31. She stated that they “never argued . . . when he was drinking,” *Id.* at 31, but verified the accuracy of her statement in a 2000 interview with an Office of Personnel

Management investigator that he had been violent after drinking twice prior to 1992, when their oldest son was born, at a time when the individual was drinking more heavily. *Id.* at 34-38.

The individual's partner testified that the individual has told her that he plans to remain sober, and she does not believe that he will return to drinking because of how hard the most recent incident, which she described as a "wake-up call," has been on him. *Id.* at 27, 31-33. She contrasted the individual's current situation with past attempts to quit drinking, noting that the treatment requirements are more stringent this time, that he has devoted a lot of time to his treatment, and that the more recent events have had a more significant impact, causing them to lose a car and affecting his job. *Id.* at 20, 31-33. She further stated that the individual has told him that he has learned a lot from his treatment program and that it has helped him. *Id.* at 29-30.

F. The Individual

In his hearing testimony, the individual initially stated, "I don't feel I do have a problem [with alcohol]. . . . I certainly don't believe I had a problem." Tr. at 131. However, he later testified that it was "[p]robably safe to say that I did have a problem with alcohol." *Id.* at 134. The individual described himself as a "casual" drinker prior to his latest DWI arrest, stating that he disagreed with his partner's estimate of his drinking and that he drank, "at the most," two or three beers every other weekend. *Id.* at 140. The individual acknowledged that his partner had expressed concern over his drinking "a couple of times . . . since we've been together." *Id.* at 142.

The individual testified that he had four beers on the day of his DWI arrest. *Id.* at 137, 138. Although he acknowledged that he was intoxicated at the time of his DWI arrests in 2000 and 2008, he described his degree of intoxication as "mild" at the time of his 1991 and 1998 DWI arrests, stating, "I don't dispute the testing, and if the testing is accurate, I would say that I was intoxicated. . . . You know, it's been several years. I don't really think I was intoxicated." *Id.* at 169. He further testified that he believes the occasions of his four DWI arrests "would be the only times" that he has driven while legally intoxicated. *Id.* at 169-70.

The individual described his current treatment regimen, stating that he attends the Integrity Recovery group once per week, and attends AA meetings sometimes as often as four meetings in three days. *Id.* at 151. He testified that he has not had the urge to drink since his February 2007 DWI, and has never felt the need to reach out for help to other members of his support group, but that if he did have such an urge, he has a "big supporting cast" to which he can turn. *Id.* at 146-47. He stated that he does not plan to drink in the future and intends to be involved with the Alumni Group after completing his program and to "stay in intensive AA." *Id.* at 145-46.

Finally, the individual was questioned at the hearing as to any explanation he might have regarding the multiple instances, cited above, where he provided false information and failed to provide relevant information during his April 2001 PSI, as well as failed to disclose information that he was required to report on five separate QNSPs. With regard to some of these

specific instances, the individual stated that he did not know why he failed to report certain information, *id.* at 156, 158, 165, 167, or did not recall doing so, *id.* at 157, while as to others he explained that he did not think he was required to report the information, *id.* at 163, 165, 166, 168, had forgotten about the information he failed to report, *id.* at 157, or that he was motivated by pride, shame, or his desire to keep his clearance and job. *Id.* at 155, 156, 157, 159.

G. The DOE Psychiatrist

The DOE psychiatrist was present throughout the entire hearing, and testified last, after having heard all of the preceding testimony. In his September 18, 2007, report regarding his evaluation of the individual, the DOE psychiatrist concluded that “[a]dequate evidence of rehabilitation or reformation” from his diagnosed Alcohol Abuse disorder “would require completion of a one-year treatment program, with maintenance of sobriety.” Exhibit 8 at 11. When asked the importance of a one-year period of treatment and abstinence, the DOE psychiatrist noted the following in his testimony:

Many people clinically say that a year is a good time frame, in that it allows you to see that the person has made it through the usual possible triggers for relapse. A calendar year gives you -- they've made it through a hunting trip, a birthday, New Year's Eve, the things that occur during a calendar year that can be triggers, and it shows that they've managed those social triggers without relapsing.

Tr. at 187. He also referred in his testimony to statistical studies showing that “the first year is a particularly vulnerable time to relapse” and that 90 percent of alcoholics who attempt to maintain sobriety fail within one year. *Id.* at 187-88.

At the time of his psychiatric evaluation, the individual was tested for “medical signs of excessive drinking.” *Id.* at 174. The psychiatrist testified that the results of those tests were “consistent with his assertion that he had maintained sobriety since . . . the time of his DWI in February of 2007.” *Id.* However, the psychiatrist stated that, in the case of the individual, for purposes of measuring the required one-year period, “the clock starts” on September 7, 2007, when he began his current treatment program. *Id.* at 184.

The psychiatrist acknowledged that, in calculating this period, he could have given him credit for his abstinence since February 2007 and for the treatment he received from his first therapist in March through June 2007. *Id.* at 183-84. However, the psychiatrist noted that the individual “had a mild positive family history, he had a serious problem, four past DWIs, he had a number of failed attempts at being able to keep his sobriety once he started, [and] he had some failed attempts of telling DOE that he intended to maintain sobriety . . .” Tr. at 189. The psychiatrist cited these as “negative prognostic factors that warranted being a little more strict with him.” *Id.* The psychiatrist also testified that although individual’s “mild depressive” or “dysthymic disorder didn't cause a defect in his judgment or reliability in itself, it would worsen the

prognosis for his alcohol abuse,” in part because “when he gets depressed, he tends to be more likely to binge drink.” Tr. at 185-86.

Specifically with regard to the treatment for alcohol problems the individual received from his first therapist in March through June 2007, the DOE psychiatrist commented that “it looks like [the therapist] maybe bought in on the denial, or perhaps just didn't have the information available to him.” *Id.* at 204. Based on the fact that the therapist appears to have only met with the individual once a month, “and then his conclusion after only four months that he didn't have a problem anymore, I don't think that was an indicator to me that that treatment was very intensive alcohol abuse treatment.” *Id.* at 205.

By contrast, the psychiatrist described the program that the individual began in September 2007 as “very good, and he seems to have taken that beyond what's required.” *Id.* at 192. The psychiatrist noted that when he saw the individual in September 2007, he “thought he had a great deal of denial. . . . Today, I believe he has much less denial than he did at the time I saw him seven months ago, although I believe there is still some that I saw flickering in and out today.” *Id.* at 180.

Nonetheless, the psychiatrist stated that he did not think the individual had “made such great progress that I would go dramatically off the usual recommendations and say that after only seven months that there is an adequate evidence of rehabilitation or reformation.” *Id.* at 194. According to the psychiatrist, the individual had “gone from being in very early recovery, when I saw him seven months ago, to being in early recovery when I'm seeing him today.” *Id.* at 194. When asked whether he saw the risk of relapse going forward as low, moderate, or high, the psychiatrist testified that it would be

moderate at this time of six months.

I think his main vulnerability now would be times of stress; that if things are going okay, he'd be all right, but if, you know, he gets home tonight and his partner said, "Geez, I'm going to run off with the mailman," or if a family member died or got sick, I think he'd be at high risk now if those occurred.

I don't think any of them are going to happen with much likelihood, but his vulnerability to that sort of thing, I think, is still pretty high. Whereas, I think at the end of a year or more, he would be able to even weather those sorts of things with a pretty good chance that he could keep his sobriety.

Id. at 195-96.

One of the reasons the psychiatrist characterized the individual as being in early recovery was his lingering denial of his problem. *Id.* at 198. For example, as noted above, the individual testified at the hearing that he believed that the four times that he was arrested for DWI would have been

the only four times he ever drove while legally intoxicated. *Id.* at 169-70. The psychiatrist testified that it is “statistically almost impossible that a person would get caught all four times in his life that he drove while intoxicated. The odds . . . are on the order of a hundred times that you'd be driving above the legal limit for every one time you get caught.” *Id.* at 198.

When asked his opinion as to the role denial may have played in his repeated failure to provide accurate information to the DOE, the psychiatrist attributed “part of the reason” to “simple lying” and “the other part is due to the fact of I'm so embarrassed and ashamed that I did this that I don't even want to admit I could do such a sort of thing,” though how much “was due to denial and how much was due to lying, I'm not sure.” *Id.* at 197.

VI. Hearing Officer Evaluation of Evidence

A. Criterion F

The key issue under Criterion F is whether the individual has brought forward sufficient evidence to demonstrate that he can now be trusted to be consistently honest and truthful with the DOE. In a number of decisions, DOE Hearing Officers have considered the implications of prior falsifications. The factors considered in these cases include the following: whether the individual came forward voluntarily to admit his falsifications, *compare Personnel Security Hearing* (Case No. VSO-0037), 25 DOE ¶ 82,778 (1995), *affirmed* (OSA, 1996) (voluntary disclosure by the individual), *with Personnel Security Hearing* (Case No. VSO-0327), 28 DOE ¶ 83,005 (2000), *affirmed* (OSA, 2000) (falsification discovered by DOE security); the length of time the falsehood was maintained; whether a pattern of falsification is evident; and the amount of time that has transpired since the individual's admission. *See Personnel Security Hearing* (Case No. VSO-0327) (2000), *affirmed* (OSA, 2000) (less than a year of truthfulness insufficient to overcome long history of falsification). *See also Personnel Security Hearing* (Case No. VSO-0289), 27 DOE ¶ 82,823 (1999) (19 months since last falsification not sufficient evidence of reformation from falsifying by denying drug use); *Personnel Security Hearing* (Case No. VSO-0319), 27 DOE ¶ 82,851 (2000), *affirmed* (OSA, 2000).

Applying each of these factors to the present case, I unfortunately find that none of them serve to in any way mitigate the relevant security concerns. First, this is not a case of one or two isolated falsifications, but rather the facts present a troubling pattern of multiple falsifications over many years, the most recent of which took place when he failed to report his 1998 DWI arrest on his 2005 QNSP. Further, in none of these cases did the individual come forward to correct the record by voluntarily admitting any of his multiple prior falsifications. Instead, these falsifications and omissions all came to light through inconsistencies noted between the accounting of events provided by the individual at various time in PSIs and on QNSPs. Indeed, when I asked the individual directly at the hearing whether he was aware of any other instances where he was not honest in providing information to the DOE, aside from at his April 2001 PSI, he stated that that was “that only incident I'm aware of.” *Id.* at 161. It was only after I brought to the attention of the individual his omission of information he was required to report on five separate QNSPs that he acknowledged the inaccuracies, and then offered no credible

explanations for any of them other than his pride, shame, or desire to keep his job and clearance. None of these explanations, of course, can justify providing anything less than truthful information on his QNSPs or at his April 2001 PSI.

The sole factor that I do find to be potentially mitigating is that the individual's falsifications appear to be limited to issues surrounding his use of alcohol and the multiple incidents arising therefrom. In this regard, I note the testimony of the DOE psychiatrist that the individual's unwillingness to provide truthful information to the DOE may stem in part from his Alcohol Abuse disorder, or in other words that this behavior is a manifestation of the individual's denial of his problem with alcohol. Arguably, to the extent the individual is rehabilitated from this disorder, the concerns arising from his falsifications would be mitigated at least in part, though the DOE psychiatrist's testimony reflects the difficulty in gauging to what degree the individual's behavior was "simple lying." *Id.* at 197. In any event, as discussed below, I do not find that the separate concerns raised by this disorder have been sufficiently resolved. In short, regardless of the role played by the individual's Alcohol Abuse disorder in the individual's dishonest behavior, I cannot find that the concerns raised under Criterion F have been sufficiently mitigated.

B. Criterion J

Having considered the hearing testimony of the two therapists and the DOE psychiatrist, I note first that the therapist who treated the individual for his alcohol-related issues from March to June 2007 declined to offer any opinion as to the individual's prognosis in recovery from his Alcohol Abuse disorder. *Id.* at 81. I would, in any event, assign limited weight to any such opinion, given this therapist's limited interaction of only a few sessions during this period. On the other hand, the therapist who has facilitated the individual's current group treatment program, and who had regular and sustained contact with the individual over the seven months prior to the hearing, rated the individual's risk of relapse as "low."

This opinion, however, was conditioned on whether the individual would apply "the necessary tools when he encounters any risk for relapse, . . ." *Id.* at 67. The DOE psychiatrist addressed this very issue in his testimony, opining that the individual's "main vulnerability now would be times of stress" and "his vulnerability to that sort of thing, I think, is still pretty high. Whereas, I think at the end of a year or more, he would be able to even weather those sorts of things with a pretty good chance that he could keep his sobriety." *Id.* at 195-96. This testimony was provided in explanation of the DOE psychiatrist's evaluation of the risk of future relapse as "moderate," rather than low. *Id.* at 195. Considering the totality of the relevant testimony and other evidence regarding the individual's long history of alcohol-related problems, and cognizant that my determinations "should err, if they must, on the side of denials," *Department of Navy v. Egan*, 484 U.S. 518, 531 (1988), I do not find that the concerns raised in this case under Criterion J have been sufficiently mitigated.³

³ On May 1, 2008, after the hearing held in this matter, the DOE Counsel forwarded to me an Incident Report and Case Evaluation Sheet concerning new information that was relevant to the concerns raised in this case

VII. Conclusion

In the above analysis, I have found that there was sufficient derogatory information in the possession of the DOE that raises serious security concerns under Criteria F and J. After considering all the relevant information, favorable and unfavorable, in a comprehensive common-sense manner, including weighing all the testimony and other evidence presented at the hearing, I have found that the individual has not brought forth sufficient evidence to sufficiently mitigate the security concerns advanced by the LSO. I therefore cannot find that restoring the individual's access authorization would not endanger the common defense and would be clearly consistent with the national interest. Accordingly, I have determined that the individual's access authorization should not be restored. The parties may seek review of this Decision by an Appeal Panel under the regulations set forth at 10 C.F.R. § 710.28.

Steven J. Goering
Hearing Officer
Office of Hearings and Appeals

Date: September 15, 2008

under both Criteria F and J. These documents related that a person reported seeing the individual with coworkers at a "Happy Hour" in July or August of 2007 "sitting at a table with a pitcher of beer." The person was not certain that the individual was consuming alcohol on this occasion. In addition, she reported the "she witnessed the Subject drink alcohol (type unknown) on one occasion in September 2007 during 'Happy Hour'" at a local establishment. E-mail from Jonathan Buckner, DOE Counsel, to Steven Goering, OHA (May 1, 2008). The DOE Counsel also provided this new information to the individual, and I provided him an opportunity to provide any response he wished to make regarding the information. E-Mail from Steven Goering, OHA, to Individual (May 2, 2008). In his response, the individual stated, in pertinent part: "I'm thinking that one or both events occurred in July 2006. I could be on an emotional hangover; . . . The emotional hangover away from work may have impacted my level of honesty that includes facts, thoughts, feelings, and revealing what is happening right now." E-Mail from Individual to Steven Goering, OHA (May 16, 2008). This new information, and the individual's response thereto, clearly heightens the concerns discussed in this Decision. I note, however, that even without this additional information, which would clearly be pertinent to any further review of the individual's case, the concerns raised by the information in the record as of the time of hearing in this matter remain, in my opinion, unresolved.